

441—152.2(234) Conditions of participation relevant to all contracts.

152.2(1) *Service descriptions.* The provider shall comply with the requirements for applicable services as described in the appendix to the contract.

152.2(2) *Signed contract.* A contract can be effective only when signed by all parties required in subrule 152.22(4).

152.2(3) *Provider certification.* The provider shall be certified to provide the applicable rehabilitative treatment services before the contract can be effective. Out-of-state providers shall meet Iowa certification requirements.

152.2(4) *Civil rights laws.* The provider shall be in compliance with all state civil rights laws and regulations and with all applicable federal civil rights laws and regulations with respect to equal employment opportunity.

152.2(5) *Title VI compliance.* The provider shall be in compliance with Title VI of the 1964 Civil Rights Act and all other federal, state, and local laws and regulations regarding the provision of services.

152.2(6) *Section 504 compliance.* The provider shall be in compliance with Section 504 of the Rehabilitation Act of 1973 and with all federal, state, and local Section 504 laws and regulations.

152.2(7) *Americans with Disabilities Act compliance.* The provider shall be in compliance with the Americans with Disabilities Act of 1990 and with all federal, state and local laws and regulations regarding the Americans with Disabilities Act.

152.2(8) *Affirmative action.* The provider shall apply affirmative action measures appropriate to correct deficiencies or to overcome the effects of past or present practices, policies, or other barriers to equal employment opportunity.

152.2(9) *Equal opportunity.* The provider shall exclude no person from the participation in or receipt of programs, activities or benefits on the grounds of race, color, creed, national origin, sex, age, religion, political belief, or physical or mental disability. Nor shall the provider discriminate against any person in employment or applying for employment on the grounds of race, color, creed, national origin, sex, age, religion, political belief, or physical or mental disability.

152.2(10) *Nondiscrimination.* The provider shall carry out all activities under the terms of any rehabilitative treatment and supportive services contract in a manner that does not discriminate against any person because of the person's race, color, creed, national origin, sex, age, religion, political belief, or physical or mental disability.

152.2(11) *Abuse reporting.* The provider shall have written policy and procedure that complies with applicable state and local laws for the reporting of child abuse.

152.2(12) *Confidentiality.* The provider shall comply with all applicable federal and state laws and regulations on confidentiality including rules on confidentiality contained in 441—Chapter 9. The provider shall have a written policy and procedure for maintaining individual client confidentiality, including client record destruction.

152.2(13) *Client appeals and grievances.* The provider shall have a written policy and procedure for handling client appeals and grievances, and shall provide information to clients about their rights to appeal.

152.2(14) *Financial and statistical records.* The provider shall maintain sufficient financial and statistical records, including program and census data, to document the validity of the reports submitted to the department. (See 441—subrule 185.102(3).)

a. The records shall be available for review at any time during normal business hours by department personnel, the purchase of rehabilitative treatment and supportive services fiscal consultant, and state or federal audit personnel.

b. These records shall be retained for a period of five years after final payment.

152.2(15) *Reports on financial and statistical records.* Financial and statistical reports shall be submitted as required in rules 441—185.102(234) and 441—185.103(234). Failure to do so within the required time limits is grounds for termination of the contract. This subrule is held in abeyance for purposes of establishing rates effective during the time period beginning July 1, 1996, through June 30, 1998.

152.2(16) *Maintenance of client records.* Records for clients served through a Rehabilitative Treatment and Supportive Services Contract, Form 470-3052, shall be retained by the provider for a period of five years after service to the client terminates. Client records for rehabilitative treatment and supportive services shall comply with the requirements set forth at 441—subrule 185.10(6), 441—subrule 156.7(2) and rule 441—182.7(234), as applicable to the specific services provided.

152.2(17) *Provider charges.* A provider shall not charge departmental clients more than it receives for the same rehabilitative treatment and supportive services provided to nondepartmental clients.

152.2(18) *Special purpose organizations.* A provider may establish a separate, special-purpose organization to conduct certain of the provider's client-related or non-client-related activities. For example, a development foundation assumes the provider's fund-raising activity. Often, the provider does not own the special-purpose organization (e.g., a nonprofit, non-stock-issuing corporation), and has no common governing body membership. A separate special-purpose organization shall be considered to be a related party for purposes of 441—subrule 185.105(11) when one of the following applies:

a. The provider controls the organization through contracts or other legal documents that give the provider the authority to direct the organization's activities, management, and policies.

b. The provider is, for all practical purposes, the primary beneficiary of the organization's activities. The provider should be considered the special-purpose organization's primary beneficiary if one or more of the following circumstances exist:

(1) The organization has solicited funds on the provider's behalf with provider approval and substantially all funds so solicited were contributed with the intent of benefiting the provider.

(2) The provider has transferred some of its resources to the organization, substantially all of whose resources are held for the benefit of the provider.

(3) The provider has assigned certain of its functions to a special-purpose organization that is operating primarily for the benefit of the provider.

152.2(19) *Certification by department of transportation.*

a. If the provider furnishes public transit service as defined in 761—910.1(324A), the provider shall annually submit to the project manager information regarding compliance with or exemption from public transit coordination requirements as found in Iowa Code chapter 324A and department of transportation rules in 761—Chapter 910. This information shall include:

(1) Form 020107, Certification Application for Coordination of Public Transit Services, which the project manager shall submit to the department of transportation; and

(2) A copy of an ACORD Certificate of Insurance or similar self-insurance documentation, as applicable.

b. If a provider believes it does not furnish public transit service as defined in 761—910.1(324A) and therefore is exempt from the requirements in paragraph “a,” the provider shall submit Form 020107 with only Section 1 completed when the provider enters into a new contract.

c. If a provider that has furnished public transit service as defined in 761—910.1(324A) ceases to do so, the provider becomes exempt from the requirements in paragraph “a.”

d. If an exempt provider begins to furnish public transit service as defined in 761—910.1(324A), the provider shall inform the project manager within 30 days of the change and shall adhere to the procedures in paragraph “a.”

e. Failure of the provider to cooperate in obtaining or providing the required documentation of compliance or exemption is grounds for denial or termination of the contract.

152.2(20) *Services provided.* Services provided, as described on Form 470-3051, Rehabilitative Treatment and Supportive Services Contract Face Sheet, and appendices, shall at a minimum meet the rules found in the Iowa Administrative Code for a particular rehabilitative treatment or supportive service or the contract may be terminated.

152.2(21) *Indemnity and insurance clauses.*

a. The provider agrees that it will indemnify, hold harmless and defend the state, the department, and its officers and employees from and against all suits, actions, or claims for personal injury or death, or damage to property because of any act, omission or neglect of the provider, its officers, agents or

employees in the provision of care or services as provided for by administrative rule and this contract, including, but not limited to:

(1) Personal injury, death or property damage of a client receiving care or services, or while on a premises owned, leased or operated by the provider, or while being transported by the provider, either directly or by arrangement.

(2) Personal injury, death or property damage of another caused by a client while receiving care or service from the provider.

This provision does not create any right or cause of action in the public or a third party to bring a claim or suit under or pursuant to its terms.

b. The provider agrees that it shall have in force and effect a liability insurance policy covering all its operations in providing the care and services required by the administrative rules and by contract, including the indemnity provision above. A "Certificate of Insurance" identifying the insurance company, the policy period, the type of policy and the limits of coverage shall be filed with the department. The insurance policy and the certificate of insurance shall show the state of Iowa and the department of human services as additional insureds. The provider further agrees that anyone transporting, or authorized to transport, clients in privately owned vehicles shall have liability insurance in force and effect covering any claim which may arise from this transport.

152.2(22) Renegotiation clause. In the event there is a revision of federal or state laws or regulations and this contract no longer conforms to those laws or regulations, both parties will review the contract and renegotiate those items necessary to conform with the new federal or state laws or regulations.

152.2(23) Subcontracting or assignability. The provider shall have no right to assign the contract. When a provider of services pursuant to this chapter delivers service through a subcontract, the provider is responsible for the subcontractor's meeting the requirements found in this division. A copy of all subcontracts for any rehabilitative treatment or supportive services, as described in the contract, or any changes to that subcontract shall be provided to the project manager at least one month prior to implementation of the subcontract. The department shall have the right to reject all or part of the subcontract. All subcontractors shall meet these requirements:

- a. All conditions of the contract shall be incorporated into any subcontract.
- b. All subcontractors shall meet certification requirements for rehabilitative treatment services.
- c. All subcontractors shall meet requirements for supportive services.
- d. A subcontract or other written agreement will not relieve the provider of responsibility or accountability to the department for the conditions of the contract.
- e. The provider has the responsibility for billing for the service and for reimbursing the subcontractor. However, the provider shall not bill for rehabilitative treatment and supportive services provided by the subcontractor unless a copy of the subcontract or any changes to the subcontract has been submitted to the project manager as required. When a subcontract or a portion of a subcontract has been rejected by the department, the provider shall not bill for services provided totally or in part through that rejected subcontract or through the part of a subcontract which was rejected. The department shall not be liable for payment for services provided through a subcontract or that portion of a subcontract which has been rejected.

f. The costs of all subcontracted services are subject to the requirements and limits set forth in rules 441—185.101(234) to 441—185.108(234). This paragraph is held in abeyance for purposes of establishing rates effective during the time period beginning July 1, 1996, through June 30, 1998.

152.2(24) Nonemployment. The provider shall be an independent contractor in the performance of contract obligations under Iowa Code chapter 669. There is no duty created for the department to defend or indemnify the provider.

152.2(25) Across-the-board cuts. Payment under the contract may be subject to across-the-board cuts pursuant to Iowa Code section 8.31.

152.2(26) Monitoring equal opportunity and affirmative action compliance.

a. Providers shall submit to the project manager the following forms at the time of submission of the initial contract for monitoring of compliance with the requirements set forth at 152.2(4), 152.2(5),

152.2(6) and 152.2(8): Equal Opportunity Review, Form 470-0148, and, as applicable, Accessibility Checklist, Form 470-0149, and Section 504 Transition Plan: Structural Accessibility, Form 470-0150.

(1) The provider shall submit the Desk Audit for Civil Rights Contract Compliance, Form 470-2215, to the project manager annually thereafter.

(2) The project manager shall submit the required forms to the diversity programs unit.

b. The diversity programs unit shall review the forms. If the unit finds areas of noncompliance, the unit shall notify the provider. The provider shall develop a plan of corrective action addressing each area of noncompliance. The corrective action plan shall include time lines for implementation and shall be submitted to the department for approval.

c. Failure to develop and implement an acceptable plan of corrective action within the timelines specified in the plan shall be grounds for termination of the contract.

152.2(27) *Age Discrimination Act compliance.* The provider shall be in compliance with the Age Discrimination Act of 1975 and with all federal, state, and local laws and regulations regarding the Age Discrimination Act.